

1 10. Plaintiff lives less than ten miles from the Facility and visited the Facility on or
2 about June 2, 2023 to have lunch. During his visit to the Facility, Plaintiff personally
3 encountered barriers (both physical and intangible) that interfered with, if not outright denied,
4 Plaintiff's ability to use and enjoy the goods, services, privileges and accommodations offered
5 at the Facility. These barriers include, but are not necessarily limited to, the following:

6 a) The entrance to the restroom was not accessible. The restroom door
7 lacked sufficient exterior maneuvering clearances making it difficult for
8 Plaintiff to approach in his wheelchair, was too heavy for Plaintiff to
9 open, and had a round knob that was difficult for Plaintiff to grasp and
10 turn. As a result, Plaintiff could not open the restroom door by himself
11 and required his wife's assistance to enter and exit the restroom.

12 b) The toilet in the restroom was not accessible. The floor space around the
13 toilet in the restroom was obstructed by the sink cabinet, preventing
14 Plaintiff from accessing the toilet as his wheelchair did not fit into the
15 space. As a result, Plaintiff could not use the toilet at the Facility despite
16 needing to, and was forced to wait until he could use the toilet at another
17 location which caused him discomfort and anxiety. In addition, Plaintiff
18 could see that the flush control was on the far side of the toilet against
19 the wall, where it would have been difficult for him to reach had he been
20 able to use the toilet.

21 c) The sink in the restroom was not accessible. The cabinet beneath the
22 sink obstructed the required knee and toe clearances, and the sink was
23 too high, preventing Plaintiff from reaching the faucet control and the
24 soap dispenser that was positioned above the sink. As a result, Plaintiff
25 required his wife's assistance to wash his hands after eating; she had to
26 put soap on his hands and rinse them for him, which was frustrating.

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1 11. There may exist other barriers at the Facility which relate to Plaintiff's
2 disabilities, and he will seek to amend this Complaint once such additional barriers are
3 identified as it is Plaintiff's intention to have all barriers which exist at the Facility and relate to
4 his disabilities removed to afford him full and equal access.

5 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
6 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
7 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
8 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
9 once the barriers are removed.

10 13. Defendants knew, or should have known, that these elements and areas of the
11 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
12 the physically disabled. Moreover, Defendants have the financial resources to remove these
13 barriers from the Facility (without much difficulty or expense), and make the Facility
14 accessible to the physically disabled. To date, however, Defendants refuse to either remove
15 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

16 14. At all relevant times, Defendants have possessed and enjoyed sufficient control
17 and authority to modify the Facility to remove impediments to wheelchair access and to
18 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for
19 Accessible Design. Defendants have not removed such impediments and have not modified the
20 Facility to conform to accessibility standards. Defendants have intentionally maintained the
21 Facility in its current condition and have intentionally refrained from altering the Facility so
22 that it complies with the accessibility standards.

23 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is
24 so obvious as to establish Defendants' discriminatory intent. On information and belief,
25 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere
26 to relevant building standards; disregard for the building plans and permits issued for the
27 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the
28 Facility; decision not to remove barriers from the Facility; and allowance that Defendants'

property continues to exist in its non-compliant state. Plaintiff further alleges, on information and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of “Full and Equal” Enjoyment and Use

16. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

17. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal enjoyment” and use of the goods, services, facilities, privileges and accommodations of the Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

21. Here, Plaintiff alleges that Defendants can easily remove the architectural barriers at the Facility without much difficulty or expense, that the cost of removing the architectural barriers does not exceed the benefits under the particular circumstances, and that Defendants violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

22. In the alternative, if it was not “readily achievable” for Defendants to remove the Facility’s barriers, then Defendants violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

23. Plaintiff alleges on information and belief that the Facility was designed and constructed (or both) after January 26, 1993 – independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Defendants violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.¹

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility’s primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

28. Here, Defendants altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

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¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Defendants violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

Failure to Maintain Accessible Features

31. Defendants additionally violated the ADA by failing to maintain in operable working condition those features of the Facility that are required to be readily accessible to and usable by persons with disabilities.

32. Such failure by Defendants to maintain the Facility in an accessible condition was not an isolated or temporary interruption in service or access due to maintenance or repairs.

33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

34. Plaintiff seeks a finding from this Court (i.e., declaratory relief) that Defendants violated the ADA in order to pursue damages under California's Unruh Civil Rights Act.

VII. SECOND CLAIM

Unruh Act

35. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

36. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

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47. Defendants' non-compliance with these requirements at the Facility aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Declaratory relief finding that Defendants violated the ADA for the purposes of Unruh Act damages.
4. Attorneys' fees, litigation expenses, and costs of suit.²
5. Interest at the legal rate from the date of the filing of this action.
6. For such other and further relief as the Court deems proper.

Dated: 09/07/2023

MOORE LAW FIRM, P.C.

/s/ Tanya E. Moore

Tanya E. Moore
Attorney for Plaintiff
Albert Dytch

² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

VERIFICATION

I, ALBERT DYTCH, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: 9/7/2023

/s/ Albert Dytch

Albert Dytch

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore

Tanya E. Moore, Attorney for
Plaintiff, Albert Dytch